

# Attempt to pervert the course of justice and conspire to defeat justice

ss 143 and 135 *Criminal Code*

**From 1 January 2014**

**Transitional Sentencing Provisions:** Each of the two tables is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period (after 14/01/09)
- Transitional provisions period (31/08/03 to 14/01/09)
- Pre-transitional provisions period (before 31/08/03)

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

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| PCJ    | pervert the course of justice                                  |
| conc   | concurrent   |
| cum    | cumulative   |
| EFP    | eligible for parole  |
| imp    | imprisonment   |
| PG     | plead guilty   |
| susp   | suspended  |
| TES    | total effective sentence                                       |
| methyl | methylamphetamine  |
| MDMA   | 3,4-Methylenedioxy-n, Alpha Dimethylphenylethylamine (Ecstasy) |
| wiss   | with intent to sell/supply                                     |
| poss   | possess  |
| AOBH   | assault occasioning bodily harm                                |
| BAC    | blood alcohol content  |

| No. | Case  | Antecedents   | Summary/Facts   | Sentence   | Appeal   |
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| 7.  | <p><i>Debono v The State of Western Australia</i></p> <p>[2019] WASCA 193</p> <p>Delivered 29/11/2019</p> | <p>35 yrs at time sentencing.</p> <p>Convicted after late PG (12.5% discount).</p> <p>Long and significant criminal history.</p> <p>Two young children, one in care; one residing with mother; no current contact with his children.</p> <p>Victim of stabbing 2010; not employed since; on disability support pension.</p> <p>Victim of sexual assault diagnosed with PTSD.</p> <p>Methyl and cannabis use from aged 17 yrs; abstained from illicit drug use 2 1/2 yrs ; relapse attributed to relationship difficulties and loss of custody of then 3 yr-old son.</p> | <p>Ct 1: Unlawful damage.<br/>Ct 2: Agg burg (commercial).<br/>Ct 3: Agg burg (commercial).<br/>Ct 4: Stealing.<br/>Ct 5: Burglary.<br/>Ct 6: Stealing.<br/>Ct 7: Att PCJ.</p> <p><u>Cts 1 &amp; 2</u><br/>In the early hrs of the morning Debono, in company with a juvenile co-accused, used a brick to smash the window of a drive-through fast-food restaurant. A short time later they both entered the premises through the smashed window. They rummaged around the office before leaving empty handed.</p> <p><u>Cts 3 &amp; 4</u><br/>The same morning Debono and the juvenile co-accused attended a shopping centre. They gained entry to the centre by using a hammer to smash a window. Inside they smashed holes in the display window of a jewellery shop, removing 159 watches valued at \$46,888.</p> <p><u>Cts 5 &amp; 6</u><br/>Several days later Debono returned to the shopping centre the subject of cts 3 and 4. Removing the protective plastic covering the previously broken window he entered the premises. Inside he used a hammer to smash the display window of another jewellery store. He then stole 52 watches valued at \$17,089.</p> | <p>Ct 1: 6 mths imp (conc).<br/>Ct 2: 12 mths imp (cum).<br/>Ct 3: 18 mths imp (cum).<br/>Ct 4: No punishment.<br/>Ct 5: 18 mths imp (conc).<br/>Ct 6: No punishment.<br/>Ct 7: 6 mths imp (cum).</p> <p>TES 3 yrs imp. EFP.</p> <p>Participation in drug and alcohol rehabilitation; some commitment shown to turn his life around.</p> | <p>Appeal allowed (backdating of sentence).</p> <p>Appeal concerned error in backdating and totality.</p> <p>Re-sentenced same terms of imp. EFP.</p> <p>Sentence backdated 189 days.</p> <p>At [33] ... the information provided to the sentencing judge was in error. The appellant has spent 189 days in custody on remand, which were available to be taken into account ...</p> <p>At [38] In backdating the appellant's sentences, [the sentencing judge] took account of only 172 days of the available 189 days. ... the appellant did not receive credit for 17 days which he had spent in custody on remand. ...</p> <p>At [56] While ... the appellant's progress towards rehabilitation is a</p> |

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|  |  |  | <p>Later the same day Debono was arrested at his home. The majority of the watches from the two jewellery stores were recovered.</p> <p><u>Ct 7</u><br/>While on remand in custody Debono made several phone calls. On two occasions he spoke to his co-offender and offered to pay him \$5,000 - \$10,000 to say he had nothing to do with the burglaries and to prepare a false affidavit in relation to the offences.</p> <p>At the time of committing these offences Debono was on bail for additional offending, for which he was sentenced to terms of imp in the District and Magistrates Courts.</p> | <p>significant mitigating factor, the seriousness of the appellant's offending must not be overlooked. Each of the burglary offences committed ... was serious. Each involved a degree of planning and premeditation. The offences ... were committed in company with a juvenile offender. The burglary on [the jewellery stores] were committed on separate occasions and involved the theft of a substantial quantity of watches of considerable value. ... All of these offences were committed while ... on bail.</p> <p>At [57] The facts and circumstances of ct 7 are also serious. ... Again, the offence shows persistence.</p> <p>At [62] ... the individual sentences and the TES imposed ... appropriately reflect all relevant sentencing considerations ... Some accumulation of the sentences is appropriate</p> |
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|    |  |   |   |   | to reflect that the burglary offences occurred on separate days and the separate nature of the appellant's att to pervert the course of justice.  |
| 6. | <p><i>Gillespie v The State of Western Australia</i></p> <p>[2016] WASCA 216</p> <p>Delivered 08/12/2016</p> | <p>32 yrs at time sentencing.</p> <p>Early PG (25% discount).</p> <p>Prior criminal history, including offences of violence and against police orders and VROs.</p> <p>Dysfunctional childhood; witnessed domestic violence; violent abusive father.</p> <p>Educated to yr 9.</p> <p>Three prior relationships; all involved substance abuse and domestic violence.</p> <p>Stable employment history.</p> | <p><u>Ind</u><br/>1 x Att to PCJ.</p> <p><u>Section 32 Notice</u><br/>2 x Agg AOBH.<br/>5 x Agg common assault.<br/>1 x Poss prohibited drug.<br/>2 x Poss drug paraphernalia.</p> <p>The offending involved three distinct episodes, over a period of about nine months.</p> <p>Gillespie and the complainant were in a relationship.</p> <p>The complainant was 21 weeks pregnant when Gillespie found messages on her phone, leading him to believe she was being unfaithful. He punched her in the face, climbed on top of her and grabbed hold of her shirt and bra. During the struggle she injured her shoulder. Gillespie also punched her so that her head hit a tiled wall, causing her to slide to the floor. He then pulled out clumps of hair as he lifted her up by the hair. He struck her with an object and grabbed her by the throat until she lost consciousness.</p> <p>After sleeping for a time Gillespie awoke and struck the complainant in the nose with the back of</p> | <p><u>Ind</u><br/>12 mths imp.</p> <p><u>Section 32 Notice</u><br/>1 x Agg AOBH: 2 yrs imp (cum).<br/>1 x .<br/>3 x Agg common assault: 3 mths imp each ct (conc).<br/>2 x Agg common assault: 6 mths imp each ct (conc).<br/>1 x Poss prohibited drug: 1 mth imp (conc).<br/>2 x Poss drug paraphernalia: 1 mth imp each ct (conc).<br/>Agg AOBH: 12 mths imp (cum).</p> <p>Agg AOBH offences cum with each other and att to PCJ.</p> <p>TES 4 yrs imp.</p> <p>High risk of reoffending in a similar manner.</p> | <p>Dismissed.</p> <p>Appellant challenged length of sentence.</p> <p>At [49] ... The appellant's offence was not a momentary aberration. There was a degree of planning in that he wrote a detailed note of what he wanted the complainant to sign. Moreover, it came after a series of telephone conversations in which the appellant made repeated attempts to cajole the complainant into withdrawing her complaint.</p> <p>At [52] ... the second offence occurred six months after the first set of assaults while the appellant was on bail, and given the serious nature of the second offence of assault OBH, it was well open to</p> |

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|    |  |  | <p>his hand.</p> <p>Police attended and located cannabis and two smoking implements in the house.</p> <p>On another occasion Gillespie threw two washing baskets at the complainant, causing her to fall. Pinning her down with the legs of a chair, he threatening to put the chair through her head before hitting her several times to the face and body.</p> <p>When in custody Gillespie called the complainant and during a prison visit gave her a note telling her to withdraw the charges, saying she had falsified the allegations against him. The note provided the wording of a letter she was to write and to sign in the presence of a JP.</p>   |              | <p>the sentencing judge to determine that a sentence of 12 mths should be served cum on the other sentences, and that a TES of 4 yrs was appropriate.</p>  |
| 5. | <p><i>Hopes v The State of Western Australia</i></p> <p>[2015] WASCA 172</p> <p>Delivered 02/09/2015</p> | <p>27 yrs at time sentencing.</p> <p>Criminal history.</p> <p>Complete high school at yr 10; commenced four yr engineering apprenticeship; opened engineering business with his father.</p> <p>Member of Comancheros Motor Cycle Gang.</p> | <p>1 x Conspire to defeat justice.</p> <p>When the appellant found out that Solciansky had been charged with criminal damage, he became concerned that his friend, who had signed a \$50,000 surety undertaking for Solciansky, would lose his money.</p> <p>An agreement was reached between the appellant and Geldart that Geldart would falsely take the blame for Solciansky in relation to the criminal damage charge. The appellant telephoned Solciansky and said he was going to drag Geldart to the cop shop to take the blame.</p> <p>Pursuant to that agreement, Geldart met with his lawyer and the lawyer drafted a witness statement and letter to the effect that Geldart was the person</p> | 21 mths imp. | <p>Dismissed – on papers.</p> <p>At [16] ... the appellant's sentence is broadly consistent with sentences customarily imposed for offences of the type committed by the appellant... and is well within the range of a sound exercise of the sentencing discretion.</p> |

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|    |   |  | <p>who poured paint over the car belonging to the complainant. A copy of that draft letter was located by police at Geldart's house.</p> <p>Geldart was prepared to plead guilty to the criminal damage charge right up to trial.</p>  |   |  |
| 4. | <p><i>Crugnale v The State of Western Australia</i></p> <p>[2015] WASCA 147</p> <p>Delivered 28/07/2015</p> | <p>53 yrs at time sentencing.</p> <p>Convicted after PG.</p> <p>Criminal history, including convictions for driving offences and entering into a false bail undertaking.</p> <p>Good relationship with parents and siblings; father has dementia.</p> <p>Has a Bachelor of Education; previously worked as a teacher; runs her own cleaning business; made positive contributions to Exmouth community.</p> <p>Neck and back problems; broken leg; awaiting surgery.</p> | <p>Ct 1: Att to PCJ.<br/>Ct 2: Att to PCJ.</p> <p><u>Ct 1</u><br/>The appellant tendered to the Court, a letter, purportedly written and signed by her employer, in support of her application for an extraordinary driver's licence. The appellant's application was successful.</p> <p><u>Ct 2</u><br/>The appellant subsequently drove on an occasion in contravention of the conditions of the extraordinary driver's licence. In defence to this charge, the appellant tendered to the Court, another letter, purportedly written and signed by her employer.</p> <p>The police were suspicious of the letter and, after making inquiries, discovered its falsity. A search of one of the appellant's workplaces revealed drafts and unsigned copies of the letters. The appellant admitted the offences in the VROI.</p> | <p>Ct 1: 18 mths imp.<br/>Ct 2: 6 mths imp (cum).</p> <p>TES 2 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge observed that each offence was premeditated and planned; offending took place on two separate occasions and was aimed at avoiding different consequences.</p> | <p>Dismissed – on papers.</p> <p>At [49] While there is no tariff for the offence, the individual sentences imposed upon the appellant were within the range of sentences customarily imposed.</p> <p>At [50] When weighed against the seriousness of the offences, the PG, along with the other mitigating factors, including the appellant's health problems and her good works in the community, do not justify the imposition of susp terms of imp.</p> <p>At [51] ...the TES of 2 yrs imm imp was, having regard to all of the circumstances of the case, unreasonable or unjust.</p> |
| 3. | <p><i>Harvey v The State of Western</i></p>   | <p>41 yrs at time sentencing.</p>  | <p>Ct 1: Poss LSD wiss 34 tabs.<br/>Ct 2: Poss methyl wiss 59.7g of 60% purity.</p>  | <p>Ct 1: 12 mths imp (conc).</p>  | <p>Dismissed – on papers.</p>  |

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| <p><b>Australia</b></p> <p><b>[2015] WASCA 146</b></p> <p>Delivered 28/07/2015</p> | <p>Convicted after trial.</p> <p>Significant criminal history, including convictions for supplying methyl and dishonesty offences.</p> <p>Three adult children.</p> <p>History of using illicit substances.</p> <p>History of depression; normal at time sentencing.</p> <p>Poor emotional and stress resilience skills.</p> <p>On bail at time offending for ct 3.</p> | <p>Ct 3: Poss methyl wiss 11g.<br/>Ct 4: Att to PCJ.</p> <p><u>Cts 1-2</u><br/>Police executed a search warrant at the appellant's home and found 34 LSD tabs, a clipseal bag containing 47.5g of methyl at 60% purity and 11 clipseal bags containing a total of approx. 12g of methyl.</p> <p>Police also found electronic scales with a calculator, empty clipseal bags, a taser gun, 22g of cutting agent, CCTV security system, several mobile phones with text messages about purchasing and sourcing drugs and tick lists.</p> <p><u>Ct 3</u><br/>Four months later, police executed another search warrant at the appellant's home and found three clipseal bags containing a total of 11g of methyl.</p> <p><u>Ct 4</u><br/>After ct 3, the appellant was refused bail. For the purpose of persuading a court to release her on bail, the appellant submitted to the Magistrates Court a letter prepared with her daughter N's name on it stating that the drugs were 'possibly hers'. The letter was untrue, unsigned and had not been prepared by N. Bail was refused.</p> <p>The appellant then emotionally and financially pressured her daughter L to swear a false statutory declaration taking responsibility for the drugs. L was 17 yrs old and had substance and mental health issues. The appellant also offered L rewards. The</p> | <p>Ct 2: 4 yrs 10 mths imp.<br/>Ct 3: 2 yrs 6 mths imp (conc.)<br/>Ct 4: 2 yrs 6 mths imp (cum).</p> <p>TES 7 yrs 4 mths imp.<br/>EFP.</p> <p>Sentencing judge noted the purity of the 47.5g of methyl and found that appellant must have been reasonably close to a source of the methyl.</p> <p>Sentencing judge found that the appellant intended to cut the large quantity of methyl; appellant was a user of methyl and was selling drugs to make money.</p> | <p>At [32] ...the appellant was engaged in drug dealing, primarily for profit...It is clear that the appellant intended to cut the larger quantity of methyl. Many of the typical accoutrements of a commercial drug dealer were present. The smaller quantities of methyl were already packaged for sale or supply.</p> <p>At [33] The commission of ct 3 shows that the appellant was a persistent and determined dealer in drugs, thus underscoring the need for personal deterrence.</p> <p>At [36] The learned sentencing judge was correct to impose a substantial and wholly cum term of imp for the offence of att to PCJ. That offending was separate from, and of a different nature to her drug offences.</p> |
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|    |   |  | false statutory declaration was tendered to the Magistrates Court and the appellant was released on bail.  |                               |   |
| 2. | <p><i>Tasovac v The State of Western Australia</i></p> <p>[2015] WASCA 24</p> <p>Delivered 05/02/2015</p> | <p>39 yrs at time of sentencing.</p> <p>Convicted after trial.</p> <p>No previous convictions.</p> <p>Appellant was a qualified veterinarian. Since about the time of the offence in 2010, she had owned a veterinarian clinic which employed 4 people.</p> <p>The appellant was in good physical and mental health.</p> | <p>1 x Att to PCJ.</p> <p>Sister of appellant was convicted of stealing equestrian equipment. Appellant later persuaded a friend to have the friend's 14 yr old daughter admit the theft.</p> <p>The intent was to exculpate the sister of the appellant, while resulting in no more than a juvenile caution for the daughter.</p> <p>The appellant was a veterinarian. The friend was a nurse working at the same veterinarian hospital.</p> <p>The appellant supplied equestrian equipment to the daughter which was the same or similar to that stolen in the original offence. This was used to support the daughter's false admission. The appellant also provided background detail for the daughter to use in the deception. Eventually, the daughter received a juvenile caution for stealing.</p> <p>In due course, the friend and her daughter confessed their subterfuge to the Police. The appellant swore an affidavit, effectively claiming her innocence.</p> <p>The friend was convicted on PG of conspiracy to PCJ and received 18 mths imp susp for 18 mths. She was sentenced on the basis that she had been prevailed upon by the appellant, had eventually cooperated with police and had given a signed undertaking to give evidence in the appellant's trial.</p> | <p>3 yrs imp.</p> <p>EFP.</p> | <p>Dismissed.</p> <p>At [122] The trial judge found that the offence was premeditated, that the deception had occurred over nearly 2 years and that it had caused the diversion of police resources and created false public records.</p> <p>At [124] The sentencing judge characterised the appellant's offending as far more serious than that of the friend. The appellant's deception involved the police, a witness and the court.</p> <p>At [135] The trial judge's assessment that the actions of the appellant were in the upper range of offending of this type is correct. Penalties imposed in other cases for offences of this nature have to be assessed in that light. The appellant's sentence of three years imprisonment</p> |

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|    |  |  | The friend did give evidence at the appellant's trial.   |  | after trial with no mitigation beyond prior good character is well within the customary range.<br><br>At [138] The differences between the appellant and the friend were ' <i>sufficient to justify the disparity in the sentences imposed...</i> '  |
| 1. | <b><i>Spence v The State of Western Australia</i></b><br><br><b>[2014] WASCA 171</b><br><br>Delivered 05/09/2014 | 38 yrs at time sentencing.<br><br>Convicted after trial.<br><br>Criminal record including one common assault.<br><br>Married now separated; four children.<br><br>Completed year 12 and Bachelor of Business; partially completed Bachelor of Engineering.<br><br>Employed as an accountant; then part owner and manager of the nightclub.<br><br>Positive references.<br><br>Positive steps towards rehabilitation. | Ct 1: GBH.<br>Ct 2: Att to PCJ.<br><br>On the evening of the incident the appellant was managing the club. In the early hours of the morning the victim was at the nightclub with two companions. A brawl ensued when security attempted to remove the victim's companions from the club.<br><br>The victim approached the brawl and attempted to pull a bouncer off one of his friends. The appellant punched the victim to the left side of his head. The punch caused the victim to fall, striking the back left hand side of his head on the step of a 4WD.<br><br>The victim sustained a severe traumatic brain injury that required urgent surgery.<br><br>Following the incident the appellant sought to deflect the police investigation by arranging for the security cameras to be switched, concealing his role in the assault and advising employees not to speak to police. | Ct 1: 3 yrs 6 mths imp.<br>Ct 2: 3 yrs imp (cum).<br><br>TES 6 yrs 6 mths imp.<br><br>EFP.<br><br>Remorse. | Allowed.<br><br>Re-sentenced to 2 yrs imp in Ct 2 (cum).<br><br>TES 5 yrs 6 mths imp.<br><br>At [52] The offending was of very short duration and involved no planning or sophistication. As serious as offences of this nature are, this was a less serious example of its type.<br><br>At [53] That sentence did not properly reflect the relative seriousness of the offence and the personal circumstances of the appellant. |

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|   |  | Letter to sentencing judge expressing his regret. |  |  |  |
| <i>Transitional Provisions Repealed (14/01/2009)</i>                                  |  |   |  |  |  |
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| <i>Transitional Provisions Enacted (31/08/2003)</i>                                   |  |   |  |  |  |
|   |  |   |  |  |  |
| <i>Maximum penalty for attempt PCJ increased from 2 yrs to 7 yrs imp (16/12/1987)</i> |  |   |  |  |  |

Office of the Director of Public Prosecutions